



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,003	11/07/2001	Ross F. Heil	TILA-01096US0	1154

23910 7590 06/04/2003

FLIESLER DUBB MEYER & LOVEJOY, LLP
FOUR EMBARCADERO CENTER
SUITE 400
SAN FRANCISCO, CA 94111

EXAMINER

ASHLEY, BOYER DOLINGER

ART UNIT PAPER NUMBER

3724

DATE MAILED: 06/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/040,003

Applicant(s)

HEIL ET AL.

Examiner

Boyer D. Ashley

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/17/03.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 20-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 26-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 3724

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group II, claims 1-19 and 26-33, in Paper No. 4 is acknowledged.
2. Claims 20-25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 4.

Specification

3. The disclosure is objected to because of the following informalities: the page 6, lines 9 and 10, includes misspelled words "am". Appropriate correction is required.
4. The use of the trademark "Foodsaver" has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Drawings

The drawings are objected to because the sign "138" in Figure 5 is used for two different elements. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Art Unit: 3724

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 2-4, 9-10, 13-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 2,9, and 13, the terms "small" and "large" in claim 2 are a relative terms which render the claim indefinite. The terms "small" and "large" are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

In claims 3, 9 and 14, the expression "a small roll" appears to be double inclusion of the small roll set forth in claim 2. There is no antecedent basis for "the center". The expression "the roller" is confusing, in that it is not clear which roller is being referred to.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-19, and 26-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Labrecque, U.S. Patent 5,044,241, in view of Ross, U.S. Patent 5,103,710.

Art Unit: 3724

Labrecque discloses the same invention as claimed including: a platform (the flat portion extending below 16 and outwardly from 34, as shown in Figure 1 wherein the film rest while being cut) capable of supporting a vacuum bag sealing apparatus being upon it's size; a storage unit (12) attached with the platform and having a roller of film, wherein the storage unit is capable of accommodating a roll of vacuum bags; a base (16) having an inlet and an outlet (as shown in Figure 1); and a slidable cutting mechanism (22).

Labrecque lacks the use of multiple rolls of a workpiece instead of just one roll; however, Ross discloses that it is old and well known in the art to use multiple rolls of material at different heights with dispensing device for the purpose of storing and dispensing multiple types of workpieces simultaneously or individually. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use multiple rolls with the dispensing device of Labrecque as taught by Ross in order to store and dispense multiple types of workpieces simultaneously or individually.

As to claim 2, the first and second rollers of the modified device of Labrecque are capable of accommodating small and large rolls.

As to claim 3, the roll of workpiece is capable of being self aligned on a roller. Moreover, it should be noted that the phrase "wherein ... the roller" does not serve to further limit the claimed invention because it is merely functional/intended use not defining any specific structure. How is the small roll self aligned.

Art Unit: 3724

As to claim 4, the phrase "wherein ... eleven inches" does not serve to distinguish the claimed invention from the prior art because it is merely in terms of the workpiece (intended use) not defining any specific structure. Moreover, the modified device of Labrecque is fully capable of use rolls of workpiece with various sizes. Furthermore, it would have been an obvious matter of design choice to use rolls of eight and eleven inches for the purpose of dispensing different sized workpieces, because such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

As to claim 5, the modified device of Labrecque discloses the use of a base that is fully capable of allowing multiple sheets of workpiece to pass through the inlet and outlet simultaneously depending upon the size of the workpiece. It should be noted as stated above the workpiece does not serve to distinguish between the claimed invention and the prior art. What allows or how is the base adapted to allow the multiple sheets of bags to pass through the inlet and outlet simultaneously?

As to claims 6 and 8, the modified device Labrecque discloses the use of a dispenser that allows multiple rolls of material to be dispensed simultaneously.

As to claims 7, 12, 15, 17, 19, 27, 29, 31, 32, and 33, the modified device of Labrecque discloses the use of a cover for the slidable cutting mechanism (see Figures 1 and 3). The modified device of Labrecque lacks the feet to hold the workpiece down while being cut; however, the examiner takes official notice that it is old and well known in the art to use feet with slidable cutting devices for the purpose of facilitating the

Art Unit: 3724

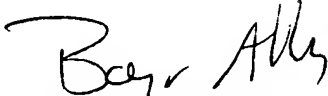
cutting action by holding the workpiece during the cutting operation. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use feet on the cutting mechanism in order to facilitate cutting the workpiece.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Boyer Ashley whose telephone number is 703-308-1845. The examiner can normally be reached on Monday thru Thursday between 7:30am and 6:00pm. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 703-308-1082.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9302. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-1148.


Boyer D. Ashley
Primary Examiner
Art Unit 3724

bda
May 27, 2003